

**U.S. DEPARTMENT OF EDUCATION
TITLE IV NEGOTIATED RULEMAKING TEAM**

TEAM II: PROGRAM AND ELGIBILITY ISSUES

**Meeting Summary
January 16 -18, 2002
Washington, DC**

Welcome

Jeff Andrade, Special Assistant to the Deputy Secretary, and Eric Jaso, Deputy General Counsel, welcomed the negotiators to this round of negotiated rulemaking. They explained that the negotiating agenda for both Teams was created in response to issues raised by the higher education community through the FED UP process, initiated by U.S Representative Howard “Buck” McKeon and U.S Representative Patsy Mink to reduce regulatory burden. Undersecretary Eugene Hickok offered his encouragement and appreciation to Team II participants. He stressed the long-term importance of these regulatory negotiations on improved access to education for Americans nationwide.

Introductions

The negotiators and facilitators introduced themselves.

Review and Adopt Protocols

This Team used the revised organizational protocols adopted by Team I as the initial draft for discussion. The Team adopted the organizational protocols with amendments, after detailed discussion of Sections II, IV and V.

Section II: Participation discussion centered on adding second alternates for some coalitions and refining coalition partner lists based on common interests, which resulted in the addition of a second alternate to the 4-year private, not-for-profit colleges and universities. Team negotiators will inform the facilitators of additional changes regarding their coalition partners by January 28, 2002.

Section IV: Agreement discussion clarified the meaning and implications of reaching consensus and the ability of coalition partners to dissent. It is the negotiators’ responsibility to communicate extensively with coalition partners throughout this regulatory negotiation and seek a common view that can ultimately lead to consensus with all the other negotiators. However, if consensus is reached among the negotiators, a coalition partner that cannot accept the consensus will retain the right to comment negatively on that issue. The negotiator is obliged to express the dissenting view of a member of his/her coalition and it will be noted in the meeting summary

Section V: Committee Meetings discussion confirmed that the facilitators will prepare and circulate draft summaries to negotiators. The negotiators will circulate the draft to coalition partners. Meeting

Meeting Summary -- January 16-18, 2002

Approved 3/6/02

Page 1

summaries will become public after approval by the committee. In this section of the protocols the Department agrees that “to the extent practicable, the Department will provide members with documents for discussion at committee meetings at least seven days in advance of the meetings.” Other negotiators explained that it would be preferable for documents to be circulated earlier than seven days in advance of the meeting so that negotiators will have more time to study the draft language with their coalition members.

Other points raised in the discussions about Team II protocols included:

- The Department will provide the draft preamble to the Team, within a reasonable amount of time prior to publication of the Notice of Proposed Rule Making (NPRM), to provide negotiators with the opportunity to comment on the preamble and to resolve any concerns prior to publication of the NPRM. The Department also explained that their goal is to include substance into regulatory language rather than into the preamble.
- Since the preamble is not negotiated, and therefore, is not consensus-based language, Team members are free to comment negatively on the preamble. By contrast, if the Team reaches consensus on the negotiated regulatory language, members agree to not comment negatively on those provisions.
- The Department explained that it created coalitions to reduce the committee size and increase the efficiency of the negotiations, while trying to ensure that all sectors of the higher education community are represented. This was done partly in response to feedback after previous Department regulatory negotiations suggesting smaller committees.
- Negotiators raised questions and concerns regarding the coalitions they were asked to represent as well as the Department’s selection of the coalitions’ negotiators.
- Several negotiators and coalition partners stated that they did not want the Department to consider their acceptance of the coalition structure and selection process to create a precedent for future Department of Education negotiated rulemakings, especially those following the 2004 re-authorization of the Higher Education Act.
- Draft meeting summaries will be prepared by the facilitators and distributed to Team negotiators within two weeks of the close of each negotiating session. Each negotiator will inform the facilitators if s/he has comments on the meeting summary or not. If no negotiators propose changes to the draft summary, it will become final prior to the next meeting. If negotiators do propose changes to the summary, the draft summary and suggested changes will be discussed and resolved at the following meeting.

Public Comment (on protocols)

Becky Timmons of the American Council on Education (ACE) requested that ACE be removed from the three coalitions it was listed belonging to in the draft protocols. She distributed a letter from the President of ACE to the Secretary of Education outlining ACE objections to the Team structure and negotiator selection process.

Meeting Summary -- January 16-18, 2002

Approved 3/6/02

Page 2

Petitions for Membership

Diane Rogers of the Council for Higher Education Accreditation (CHEA) petitioned the Team to expand the accreditation agencies role on the Team beyond the 12-hour rule issue to allow their full participation in Team decisionmaking on all issues. There was not a consensus for this change. The Team did agree to allow accreditation agencies negotiators to participate in Team discussions on all issues.

Janel Casera of the National Direct Student Loan Coalition (NDSLC) petitioned for membership on the Team. One member dissented from approving this petition, and therefore, the petition for participation was denied.

Review and Finalize Negotiating Agenda

The Team discussed the draft final agenda of issues, which included the list of issues circulated at the December 14, 2001 preliminary meeting and additional issues identified in the weeks since that meeting. The Department proposed 3 additional issues, all of which were accepted by consensus. The Team also decided to retain and expand the issue from FED UP #36, entitled “no fault late disbursements,” on its negotiating agenda notwithstanding that Team I had indicated its intent to address the issue. In addition, FED UP #94 was expanded to include a discussion on the possibility of permitting defaulted borrowers, who voluntarily make all payments due on past due accounts, to regain eligibility for all Title IV funds, not just Perkins Loan funds. Team II agreed to provide Team I opportunities for input on the issue. Other possible negotiating items were discussed but none received consensus support. The Team reached final consensus on its negotiating agenda, which includes 25 issues. The final negotiating agenda will be posted on the listserv.

Workshop Style Review of Issues

The primary objective of these discussions was to provide the Department sufficient information to develop draft negotiating language or other solutions, as appropriate. For each topic, the federal negotiator described the Department’s understanding of the issue and then solicited information, advice, concerns, and interests of the Team members with regard to the issue.

Public Comment (on issues)

Janel Casera, of NDSLC and Director of Financial Aid, Virginia Commonwealth University, offered comments on three Return of Title IV Funds issues: Attendance, 50% Grant Protection, and Timely Refunds.

Next Meeting

The Department will provide draft regulatory language for issues designated and agreed to as “quick fix” items by January 28, and for all other issues, at least seven days prior to the next Team II negotiating session. The next session convenes at 1:30 Wednesday March 6, ending Friday March 8, 2002, during which the Team will undertake a thorough review of each issue in an attempt to reach tentative agreements on each item. The agenda for the session will indicate the expected order of the topics. Please note that it is not possible to predict how long each topic will require and the Team may decide to change the order from the draft agenda for the session.